

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SUSAN HERTZ, Individually and as Personal  
Representative of the ESTATE OF ROGER B.  
HERTZ, Deceased,

Case No. 08-12283

Plaintiff,

Honorable John Corbett O'Meara

v.

H. BRUCE T. HILLYER, MARTIN &  
HILLYER, Barristers & Solicitors, and  
LAKESHORE LAW CHAMBERS,

Defendants.

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**ORDER DISMISSING THE COMPLAINT FOR LACK OF SUBJECT MATTER  
JURISDICTION**

This matter is in the earliest stages of litigation. Plaintiff filed her complaint May 27, 2008. On August 28, 2008, defendants H. Bruce Hillyer and Martin & Hillyer filed an answer. Even in these initial stages of the case, it is clear to the court that it does not have jurisdiction over this matter.

The court has an affirmative duty to police its docket and ensure that it has jurisdiction over the cases presented to it. "The existence of subject matter jurisdiction may be raised at any time, by any party, or even *sua sponte* by the court itself." In re Lewis, 398 F.3d 735, 739 (6th Cir. 2005). The question of jurisdiction is fundamental and in this instance, an obvious one. The complaint states that the parties are from Canada. Diversity is non-existent. See 28 U.S.C. § 1332.

Plaintiff claims there is a federal question at stake; however, after reviewing the complaint, the court fails to find one. Plaintiff seeks damages from the Defendants because she believes they committed legal malpractice and breached a contract during their representation of a previous

Federal Tort Claims Act (FTCA) that was dismissed because it was filed past the statute of limitations. Although the FTCA action is a factual allegation, it is not the legal claim being made to this court. The legal malpractice and breach of contract claims are not federal questions. As such, the court does not have subject matter jurisdiction because the Plaintiff failed to present a federal question to this court and because the parties lack diversity for the purposes of subject matter jurisdiction.

### **CONCLUSION**

Accordingly, IT IS HEREBY ORDERED that Plaintiff's complaint is DISMISSED for lack of subject matter jurisdiction.

### **SO ORDERED.**

s/John Corbett O'Meara  
United States District Judge

Date: September 19, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 19, 2008, by electronic and/or ordinary mail.

s/William Barkholz  
Case Manager